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No. 192

In the Supreme Court of the United States

OCTOBER TERM, 1935

HERBERT LESTER TYSON, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The District Court rendered no opinion. The opinion of the Circuit Court of Appeals (R. 21–25) is reported in 76 F. (2d) 533.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on April 3, 1935 (R. 25). The petition for a writ of certiorari was filed June 29, 1935, and was granted October 14, 1935 (R. 26). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the instant suit was begun within the time prescribed by Section 19 of the World War Veterans' Act, 1924, as amended.

STATUTES AND REGULATIONS INVOLVED

These are set forth in the Appendix, *infra,* pp. 23–27.

STATEMENT

The petitioner brought suit in the District Court of the United States for the Eastern District of North Carolina to recover total permanent disability benefits under a contract of war-risk term insurance issued to him during his service in the United States Army (R. 2–4). The petition was filed November 17, 1932, and it was alleged therein that total permanent disability had existed ever since the petitioner's discharge from the Army on December 18, 1918, nearly fourteen years prior to the time when he filed suit (R. 2, 3–4).

The respondent filed an answer denying the allegations of disability, and also moved to dismiss the action for want of jurisdiction in that "the suit was not instituted within the time in which the United States has consented to be sued, as prescribed by statute" (R. 5–6). The trial court made findings of fact and entered judgment for the defendant dismissing the suit (R. 6–7) after considering certain undisputed evidence which may be briefly summarized as follows:

Prior to making claim for insurance benefits the petitioner had corresponded with the Veterans' Administration and had filed certain forms relating to compensation and disability allowances not here material, as it is not here contended that such applications related to the insurance claim (R. 9–12).

On July 2, 1931, the plaintiff signed and executed Form 579 of the Veterans' Administration (R. 12–15), which was a form designed for claims for permanent total disability benefits under insurance policies. This form was received by the Veterans' Administration on July 3, 1931 (R. 7).

On November 16, 1932, the plaintiff received the following letter (R. 7), dated November 12, 1932, from H. L. McCoy, Director of Insurance of the Veterans' Administration (R. 15–16):

> This is with further reference to the above-entitled claim. You are informed that a decision was rendered on November 7, 1932, by the Insurance Claims Council to the effect that the evidence is not sufficient to establish as a fact that the former insured was totally and permanently disabled at a time when the contract of insurance was in force, and therefore the claim has been denied.
>
> You may consider such denial final for the purposes of instituting suit under Section 19 of the World War Veterans' Act, 1924, as amended.

> If you accept the denial of the claim by the Council as final, the suspension of the statute of limitations provided by Section 19 shall cease from and after the date of this letter plus the number of days usually required by the Post Office Department for the transmission of regular mail from Washington, D. C., to your last address of record.
>
> * * * * *

The envelope containing the letter was postmarked at Washington November 14, 1932 (R. 7).

The petition was filed in this case and a summons issued on November 17, 1932 (R. 1–2). A copy of the petition was served on the United States Attorney on November 19, 1932 (R. 2) and the summons and return filed in the court on November 23, 1932 (R. 1).

The Circuit Court of Appeals held that the suit was properly dismissed as not having been commenced within the time limited by statute, and affirmed the judgment (R. 22–26).

SUMMARY OF ARGUMENT

The petitioner seeks a construction of Section 19, World War Veterans' Act, as amended, which would extend the proviso suspending the limitation period during the pendency of a claim in the Veterans' Bureau so that the suspension would end not with the denial but with the notification of the claimant. Because the statute specifically states that the suspension ends with the denial of the

claim and fails to provide for any additional period for notification, three Circuit Courts of Appeals have held against the construction sought. The decisions to the contrary appear to be at variance with numerous holdings of this Court that statutes dealing with the relaxation by the United States of its sovereign immunity from suit are to be strictly construed. One decision of particular pertinency to the question here involved is *United States* v. *Michel,* 282 U. S. 656, as it was there held that a limitation on suits to recover internal-revenue taxes could not be extended by implication to include notification of disallowance of the claim for refund even though the statute required the Commissioner to notify the taxpayer.

Congressional committee reports relating to the statute state that the suspension ends on the "date of disallowance of the claim by the director", and if it had been in the contemplation of Congress that the suspension period of Section 19 should not end until notice of disallowance was given it would seem that the desirability of specifying as to the manner and time of notice would have been apparent. The failure, therefore, of Congress to provide other than that the period ends with denial may be taken as evidencing a purpose contrary to the petitioner's contention.

The bureau charged with the administration of the statute has construed the term "denial" to mean the act of disallowance rather than the act of

notification, so that regulatory provisions extending the suspension period to include the sending of notice of rejection would appear to be without statutory authority.

But in any event petitioner's suit was not timely instituted. Having delayed the filing of his claim until the last day allowed by the statute, he was under the necessity of bringing suit on the day of denial, for there was no unexpired portion of the limitation to be preserved by the suspension period. This he did not do.

Furthermore, as he failed to comply with all the conditions of Sections 762 and 763 of Title 28, U. S. C., until several days after he had filed his petition, there is authority for holding that his suit was not brought until the requirements of service and return had been met, which would have been too late under any theory of his case.

ARGUMENT

I

THE STATUTORY PROVISION THAT THE SUSPENSION OF A LIMITATION PERIOD ON WAR RISK INSURANCE SUITS SHOULD END WITH DENIAL OF A PENDING CLAIM MAY NOT BE EXTENDED TO ALLOW AN ADDITIONAL PERIOD FOR NOTICE OF THE DENIAL TO BE SENT THE CLAIMANT IN THE ABSENCE OF CLEAR CONGRESSIONAL SANCTION FOR THE EXTENSION

The single question in this case is whether the petitioner brought his suit against the United States within the time permitted by Section 19, *infra,* p. 23, which in part provides:

> No suit on yearly renewable term insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made or within one year after July 3, 1930, whichever is the later date * * *: *Provided,* That for the purposes of this section it shall be deemed that the right accrued on the happening of the contingency on which the claim is founded: *Provided further,* That this limitation is suspended for the period elapsing between the filing in the bureau of the claim sued upon and the denial of said claim by the director. * * *

The petitioner alleged in his suit that he became totally and permanently disabled on December 18, 1918, and claimed insurance benefits from that date (R. 3–4). His action instituted in November 1932 was therefore more than six years after the "right accrued for which the claim is made" and more than one year after July 3, 1930. Accordingly, it was barred unless the petitioner could show a period of suspension of the statute sufficient to cover the period between "denial" of the claim and the institution of suit.

It is well settled that "suit must be brought within such length of time following denial of the claim as was equal to the unexpired portion of the limitation when the claim was filed." *Creasy* v. *United States,* 4 F. Supp. 175, 177 (W. D. Va.). Cf.

Hipkins v. *United States*, 1 F. Supp. 505 (D. C. Md.); *Roberts* v. *United States*, 66 F. (2d) 273 (C. C. A. 10th); *Stallman* v. *United States*, 67 F. (2d) 675 (C. C. A. 8th); *United States* v. *Gower*, 71 F. (2d) 366 (C. C. A. 10th); *United States* v. *Thomson*, 71 F. (2d) 860 (C. C. A. 10th); *Weaver* v. *United States*, 72 F. (2d) 20 (C. C. A. 4th); *Corn* v. *United States*, 74 F. (2d) 438 (C. C. A. 10th). Because the six-year period was not here applicable, the only period of limitation which petitioner might claim was unexpired when his claim was filed would be the year allowed from July 3, 1930.

It is apparently conceded by the petitioner that his claim was filed in the Bureau when it was received on July 3, 1931 (Br. pp. 2, 8), and this concession seems required by the decisions.[1]

The petitioner also accepts the conclusion of the Circuit Court of Appeals that the claim was denied by the Director on November 12, 1932 (Br. p. 2).[2] He contends, however, that the filing of the claim

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[1] See *Weaver* v. *United States*, *supra*; *Creasy* v. *United States*, *supra*; *Young* v. *United States*, 5 F. Supp. 500 (D. C. Idaho).

[2] While there is ground for argument that the claim was denied on November 7, 1932, when the decision of the Insurance Claims Council was rendered (R. 15; see *Frederick* v. *United States*, 294 U. S. 695), it is immaterial to the question here presented whether that time or November 12, 1932, be taken as the date of denial of the claim because in either event the limitation period would have expired, unless the petitioner's contentions herein are sustained.

on July 3, 1931, operated to allow him to file suit a day after the expiration of the period of suspension. It is further asserted by the petitioner that the suspension period did not expire with the denial of the claim, but was extended to include the time necessary for transmission through the mails of the notice of disallowance.

To establish that his suit was timely filed we submit that the petitioner was under the necessity of showing (1) that the suit was "brought" on November 17, 1932, although service was not made on the United States Attorney until November 19, 1932, and return filed November 23, 1932; (2) that the filing of his claim on July 3, 1931, did not require the institution of suit on the day of the denial of the claim but that an additional day was allowed; and (3) that the suspension period did not end with the denial of the claim but with the time required for notice thereof to reach the petitioner through the ordinary course of the mails. If any of these contentions fail, the petitioner's timely institution of suit cannot be established.

The first contention of the petitioner, indispensable to any assertion that the suit was timely instituted, is that the suspension of the limitation period did not "expire upon action by the director denying the claim, but upon the expiration of the number of days usually required by the post office department for the transmission of mail from Washington, D. C., to the insured's last address of

record" (Br. p. 3). Such a contention has been rejected by three Circuit Courts of Appeals and a number of District Courts. The Circuit Court of Appeals for the Tenth Circuit has held adversely to petitioner's contention in *United States* v. *Gower*, 71 F. (2d) 366, *supra*, and *Corn* v. *United States*, 74 F. (2d) 438, *supra* (cf. *Roberts* v. *United States*, 66 F. (2d) 273, *supra*); the Circuit Court of Appeals for the Eighth Circuit in *Stallman* v. *United States*, 67 F. (2d) 675, *supra*, and the Circuit Court of Appeals for the Fourth Circuit in the instant case. See also *Hipkins* v. *United States*, 1 F. Supp. 505 (D. C. Md.), *supra*; *Hunnewell* v. *United States*, 2 F. Supp. 389, 392 (D. C. N. H.); and *Harrop* v. *United States*, 10 F. Supp. 753 (D. C. Nebr.).

Admittedly in conflict with the cases cited is the decision of the Circuit Court of Appeals for the Fifth Circuit in *United States* v. *Walker*, 77 F. (2d) 415, in which the view is taken that "Nothing in the language of the statute indicates a purpose to make a denial of the claim effective prior to delivery of notice of it at the place of the claimant's address" (p. 416). In *Baraby* v. *United States*, 1 F. Supp. 443 (D. C. Mont.); *Creasy* v. *United States*, 4 F. Supp. 175 (W. D. Va.), *supra*; and *Albek* v. *United States*, 4 F. Supp. 1020 (E. D. N. Y.), it is indicated that the suspension of the limitation period does not end until actual notice of denial of the claim has been received by the

claimant. Certain language in *Weaver* v. *United States,* 72 F. (2d) 20, *supra,* intimates the same conclusion, although citing with approval the authorities holding otherwise. It should be pointed out that this was an earlier decision by the Circuit Court of Appeals which rendered the decision in the instant case.

But unless Section 19 requires the interpretation that the suspension period is to be extended until notice is given, it is our view that such construction is not permitted, for this Court has said that it is axiomatic in Federal jurisprudence that statutes dealing with the relaxation by the United States of its sovereign immunity from suit are to be strictly construed and the courts may not extend liability to suit beyond what the language of the statute requires. See *United States* v. *Michel,* 282 U. S. 656, 659; *Eastern Transp. Co.* v. *United States,* 272 U. S. 675, 686; *Price* v. *United States,* 174 U. S. 373, 376.

We believe that this Court's decision in *United States* v. *Michel, supra,* is particularly pertinent to the question here involved. There a statute was considered limiting the time within which suit might be brought to recover taxes illegally assessed or collected to two years after the disallowance of the claim by the Commissioner of Internal Revenue and the statute required the Commissioner to notify the taxpayer of disallowance by mail within ninety days. The Commissioner waited three years before notifying the taxpayer, who filed suit within

two years thereafter. It was contended by the taxpayer that the limitation period of the statute did not begin to run against him until after he received notice of the denial and that therefore his suit had been timely filed. This contention was rejected, the Court saying (p. 659):

> While the statute declares that the Commissioner within a specified time shall notify the taxpayer that his claim has been disallowed, it is nowhere stated that the Commissioner's failure to give the notice will in any event operate to extend the time for bringing suit.

and further, on p. 660:

> Having regard to the rule of strict construction to be applied to waivers by the United States of its sovereign immunity from suit, the clause reasonably may be read merely as a direction to the Commissioner to send the notice to claimant without making the failure so to do have the effect of enlarging the period for suing as otherwise definitely prescribed.

It is especially to be noted in the *Michel* case that the statute specifically provided for the notification of disallowance, while in the instant case no such provision is to be found. The significance of the omission of such a provision was commented on by the Circuit Court of Appeals for the Eighth Circuit in *Stallman* v. *United States,* 67 F. (2d) 675, *supra.* It was there said (p. 676):

> The conditions upon which this suit can be maintained against the government are those prescribed by the acts of Congress, and the court may not enlarge the rights accorded. * * * As the statute * * * says nothing about any additional suspension until notice can be brought home to the claimant, it is our clear duty to hold that the suit was barred.

See also *Harrop* v. *United States,* 10 F. Supp. 753, 756 (D. Neb.), *supra.*

The amendment made to Section 19 by the Act of May 29, 1928, c. 875, 45 Stat. 964, contained practically the same language with regard to the period of limitation as the amendment of July 3, 1930, involved in the instant case. Both the House and Senate reports in discussing the proviso dealing with the suspension of the limitation said:

> In computing the limitation period it is provided that the time from the date of filing claim for insurance benefits to *the date of disallowance of the claim by the director,* shall not be included.[3] (Italics ours.)

The reenactment of the proviso in substantially identical language by the amendment of July 3, 1930, presumably intended the same computation of the suspension period and the Committee reports indicate no changed purpose.[4] That purpose, as

[3] Senate Report No. 1297, p. 1, 70th Cong., 1st Sess.; House Report No. 1274, p. 1, 70th Cong., 1st Sess.

[4] Senate Report No. 885, p. 3, 71st Cong., 2d Sess.; House Report No. 874, pp. 6–8, 71st Cong., 2d Sess.

H. R. Conference Report No. 2060, 71st Cong., 2d Sess.

previously stated, was that the suspension should end on the "date of disallowance of the claim by the director" and if it had been in contemplation that disallowance should include the notification of the claimant, it would seem that Congress would have recognized the desirability of providing specifically as to the manner and time of notice. Otherwise uncertainty as to the limitation of the suspension period might be expected, and those decisions which have held notice necessary reveal that confusion exists as to whether actual or constructive notice should be given. Cf. *Creasy* v. *United States,* 4 F. Supp. 175 (W. D. Va.), *supra; Baraby* v. *United States,* 1 F. Supp. 443 (D. C. Mont.), *supra,* and *United States* v. *Walker,* 77 F. (2d) 415 (C. C. A. 5th), *supra.* In the light of the foregoing the failure of Congress to provide that the suspension period should be extended after denial until the claimant was notified of the rejection of his claim is to be taken, we submit, as evidencing a contrary intent. *Girard Trust Co.* v. *United States,* 270 U. S. 163, 169.

The petitioner urges that Veterans' Administration Regulation 3107, *infra,* p. 26, which provides for an extension of the suspension period allowed by Section 19 to include the time required for the notice of denial to be sent the claimant through the mails amounts to an administrative construction of the statute entitled to great weight (Br. p. 6).

Only the term "denial" in the statute could be here open to question and the petitioner overlooks

the fact that the very regulation to which he directs attention clearly expresses the view that the "denial" of a claim occurs before the notice of disallowance provided by the regulation is sent the claimant. While thus construing the denial of the claim to be the act of disallowance, the regulation nevertheless attempts to extend the statutory period of limitation suspension to include the time necessary for notification of the claimant through the mails.

In *Schillinger* v. *United States*, 155 U. S. 163, 166, this Court said in discussing the consent accorded by Congress to suits against the United States:

> *Beyond the letter of such consent*, the courts may not go, no matter how beneficial they may deem or in fact might be their possession of a larger jurisdiction over the liabilities of the Government. (Italics ours.)

Also, in *Eastern Transp. Co.* v. *United States*, 272 U. S. 675, 686, it was said that a court should not enlarge the liability of the United States to suit "beyond what the language requires."

If the courts are thus circumscribed within the letter of the consent, *a fortiori* an administrative official would have no greater right to extend the Government's liability to suit. As was said by this Court in *Miller* v. *United States*, 294 U. S. 435, 440, with reference to another Veterans' Administration regulation:

> The only authority conferred, or which could be conferred, by the statute is to make regulations to carry out the purposes of the act—not to amend it.

See also *Campbell* v. *Galeno Chemical Co.*, 281 U. S. 599.

Presumably the present Congress also holds the view that Section 19 requires such a construction of the word "denial" as would terminate the suspension period with the act of disallowance and not with the receipt of notice. This seems implicit in a Joint Resolution adopted by the 74th Congress (S. J. Res. 65).[5] One purpose of this resolution was stated by the President in his veto memorandum[6] to be the extension of the period of limitation provided by Section 19 to apply where "because of failure to file claim at an earlier date, very little time remained for filing suit after final denial by the Administrator of Veterans' Affairs." The Joint Resolution and the President's veto memorandum appear in the Appendix herein (*infra*, pp. 27–29).

What is said in the veto memorandum with respect to the claimant's delay in the presentation of a claim being the proximate cause of such a situa-

[5] Passed the Senate, March 13, 1935, 79 Cong. Rec., Part 4, p. 3654. Passed the House, August 20, 1935, 79 Cong. Rec., Part 13, p. 13825.

[6] Presidential approval was withheld from this resolution after the adjournment of Congress, constituting a so-called pocket veto. The veto memorandum giving the reasons for the action taken was signed on September 5, 1935, and filed at the White House.

tion as that of which the petitioner complains, finds support in the *Stallman* decision, *supra*. It is therein recognized (67 F. (2d) 676) that a claimant is charged with the knowledge that he had a limited time to bring suit because of his own delay of many years before taking any steps to assert a claim, and it was therefore "incumbent upon him to acquaint himself with the action of the director on his claim so that he could act promptly" and sue within the time limit. Cf. *United States* v. *Michel*, 282 U. S. 656, 659, *supra*.

II

WHERE THE FILING OF A CLAIM IN THE BUREAU IS DELAYED UNTIL THE LAST DAY ALLOWED BY THE STATUTE, SUIT MUST BE BROUGHT ON THE DAY OF DENIAL

The petitioner also challenges the view taken by the court below that, even if the claim be treated as denied when the notice of disallowance was received through the mails on November 16, 1932, the suit filed a day later was nevertheless not brought within the time limited by the statute.

It appears to be the contention of the petitioner that he gained a full day's suspension of the statute when he filed his claim on July 3, 1931, the last day of the limitation period under the amendment of July 3, 1930, and that he was entitled to have the benefit of an additional day to bring suit after denial.

Such contention seems to be answered by *Creasy* v. *United States*, 4 F. Supp. 175 (W. D. Va.),

supra, where, as in the instant case, a claim was filed on July 3, 1931, the court pointing out (p. 178) that as that day was the last of the year's grace allowed by the amendment there remained no unexpired portion of the limitation to continue after the suspension ended with denial.

Under the provision of the statute the filing of the claim suspended the limitation "for the period elapsing between the filing in the bureau of the claim sued upon and the denial of said claim by the director." In this case the suspension operated between July 3, 1931, and the date of the denial of the claim, but just as the petitioner would have had to bring suit at the latest on July 3, 1931, except for the filing of his claim in the Bureau, so he was under the necessity of instituting his action on the day that, with the termination of the suspension, stood for July 3, namely, the day of denial.

The fallacy of the petitioner's contention may appear more clearly if it be assumed that a claim was filed on July 2, 1931. Certainly in such circumstances only one day of the year allowed by the amendment remained unexpired, yet the petitioner would contend the same period to be available if the claim were filed the following day. Carried to its logical conclusion, such a contention would allow one day more than a year where a claim was filed on July 3, 1930, and was not denied until after July 3, 1931. This would not only be opposed to the provisions of the statute here involved but also at variance with the general rule that the time

within which an act is to be done is to be computed by excluding the first day and including the last. See *Sheets* v. *Selden's Lessee*, 2 Wall. 177; *Siegelschiffer* v. *Penn Mut. Life Ins. Co.*, 248 Fed. 226 (C. C. A. 2d).

The opinion rendered in this case by the Circuit Court of Appeals refers to a number of cases all computing the suspension period under Section 19 in accordance with the rule above stated (R. 25).

The petitioner cites the case of *Bonwit Teller & Co.* v. *United States*, 283 U. S. 258, 265, as supporting his contention but we fail to see that the decision is in any way pertinent to the question here involved.

III

AS THE PROCEDURE SET FORTH IN CONSENT LEGISLATION MUST BE STRICTLY FOLLOWED, IT MAY BE QUESTIONED WHETHER PETITIONER TIMELY BROUGHT SUIT IN ANY EVENT

Even if the petitioner should establish that the suspension period of Section 19 continued until notice of denial had been received and that he had an additional day after such notification to institute action, there would still remain the question whether the suit was timely "brought". This question arises from the fact that the procedure for suits against the United States under Section 19 is specifically required to "be the same as that provided in sections 762 and 763 of Title 28, and section 765 of Title 28 so far as applicable."

The last-named section is not here material, but the first two sections (*infra*, pp. 25–26) require *inter*

alia that a plaintiff shall file his petition with the clerk of the court, shall cause a copy thereof to be served on the district attorney of the United States in the district wherein the suit is brought, and shall mail a copy of the petition by registered letter to the Attorney General of the United States. The plaintiff is also required to file with the clerk of the court wherein the suit is instituted an affidavit of such service and the mailing of such letter.

In the instant case the petition was filed on November 17, 1932, but service was not made on the United States Attorney until two days later (R. 2), and while the record does not reveal if, or when, a copy of the petition was mailed to the Attorney General, it is recorded that "summons and return" were filed November 23, 1932 (R. 1), which entry may relate to the required affidavit of service.

The court below treated the suit as instituted on November 17, 1932, when the petition was filed, without discussing the question, but there are authorities which lend support to a contention that the suit was not brought until the requirements of the statute as to service and return had been met. See *Creasy* v. *United States,* 4 F. Supp. 175, 179 (W. D. Va.) *supra; Miller* v. *United States,* 11 F. Supp. 924 (W. D. N. Y.). Cf. *Reid Wrecking Co.* v. *United States,* 202 Fed. 314 (N. D. Ohio); *Cassarello* v. *United States,* 265 Fed. 326 (M. D. Pa.).

In *Walton* v. *United States,* 73 F. (2d) 15, the Circuit Court of Appeals for the Eighth Circuit, while recognizing that when the United States con-

sents to be sued the procedure prescribed by Congress must be strictly followed, nevertheless took the view that the sections in question did not control the institution of suit. It was held that the time of the commencement of the action is to be determined according to the law of the State in which the suit was brought, pursuant to the Conformity Act.

As the law of North Carolina, wherein the instant suit was brought, provides that an action is commenced when summons is issued (Sec. 404, N. Car. Code, 1931), it could possibly be contended under the authority of the *Walton* decision that this suit was instituted with the filing of the petition and the issuance of summons on November 17, 1932.

We believe it may be questioned, however, whether the *Walton* decision accords with the principle frequently recognized by this Court that strict construction is to be given any statute waiving the sovereign immunity of the United States from suit. In *Rock Island &c. R. R. Co.* v. *United States,* 254 U. S. 141, 143, this Court said:

> Men must turn square corners when they deal with the Government. If it attaches even purely formal conditions to its consent to be sued those conditions must be complied with.

In the light of the above and similar holdings, we are inclined to the view that a suit against the United States pursuant to the provisions of Sections 762 and 763 of Title 28, U. S. C., may not be said to be instituted until all the conditions of the

statute have been met. If such is the correct view, it further establishes that the petitioner's suit herein was not timely brought.

CONCLUSION

For the reasons stated, we respectfully submit that the judgment of the Circuit Court of Appeals should be affirmed.

STANLEY REED,
Solicitor General.
WILL G. BEARDSLEE,
Director Bureau of War Risk Litigation.
WILBUR C. PICKETT,
RANDOLPH C. SHAW,
Special Assistants to the Attorney General.
W. MARVIN SMITH,
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DECEMBER 1935.

APPENDIX

STATUTES AND REGULATIONS INVOLVED

Section 19 of the World War Veterans' Act, 1924, as amended July 3, 1930, c. 849, Sec. 4, 46 Stat. 992, provides in part as follows (38 U. S. C., Sec. 445):

> In the event of disagreement as to claim, including claim for refund of premiums, under a contract of insurance between the bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the district court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies. The procedure in such suits shall be the same as that provided in sections 5 and 6 of the Act entitled "An Act to provide for the bringing of suits against the Government of the United States," approved March 3, 1887, and section 10 thereof so far as applicable. * * *
>
> No suit on yearly renewable term insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made or within one year after the date of approval of this amendatory Act, whichever is the later date, and no suit on United States Government life

(converted) insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made: *Provided*, That for the purposes of this section it shall be deemed that the right accrued on the happening of the contingency on which the claim is founded: *Provided further*, That this limitation is suspended for the period elapsing between the filing in the bureau of the claim sued upon and the denial of said claim by the director. Infants, insane persons, or persons under other legal disability, or persons rated as incompetent or insane by the bureau shall have three years in which to bring suit after the removal of their disabilities. If suit is seasonably begun and fails for defect in process, or for other reasons not affecting the merits, a new action, if one lies, may be brought within a year though the period of limitations has elapsed. Judgments heretofore rendered against the person or persons claiming under the contract of war-risk insurance on the ground that the claim was barred by the statute of limitations shall not be a bar to the institution of another suit on the same claim. No State or other statute of limitations shall be applicable to suits filed under this section.

* * * * *

The term "claim" as used in this section, means any writing which alleges permanent and total disability at a time when the contract of insurance was in force, or which uses words showing an intention to claim insurance benefits and the term "disagreement" means a denial of the claim by the director or someone acting in his name on an appeal to the director. This section, as amended, with the exception of this paragraph, shall apply to all suits now pending

against the United States under the provisions of the War Risk Insurance Act, as amended, or the World War Veterans' Act, 1924, as amended.

Section 13 of the War Risk Insurance Act, as amended October 6, 1917, c. 105, Sec. 2, 40 Stat. 399, provides in part as follows:

> That the director, subject to the general direction of the Secretary of the Treasury, shall administer, execute, and enforce the provisions of this Act, and for that purpose have full power and authority to make rules and regulations, not inconsistent with the provisions of this Act, necessary or appropriate to carry out its purposes, * * *.

The Act of March 3, 1887, c. 359, 24 Stat. 506, provides:

> SEC. 5. That the plaintiff in any suit brought under the provisions of the second section of this act shall file a petition, duly verified with the clerk of the respective court having jurisdiction of the case, and in the district where the plaintiff resides. Such petition shall set forth the full name and residence of the plaintiff, the nature of his claim, and a succinct statement of the facts upon which the claim is based, the money or any other thing claimed, or the damages sought to be recovered and praying the court for a judgment or decree upon the facts and law. (28 U. S. C., Sec. 762.)
>
> SEC. 6. That the plaintiff shall cause a copy of his petition filed under the preceding section to be served upon the district attorney of the United States in the district wherein suit is brought, and shall mail a copy of the same, by registered letter, to the Attorney-General of the United States, and shall thereupon cause to be filed with

> the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letter. It shall be the duty of the district attorney upon whom service of petition is made as aforesaid to appear and defend the interests of the Government in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case to file a plea, answer, or demurrer on the part of the Government, and to file a notice of any counterclaim, set-off, claim for damages, or other demand or defense whatsoever of the Government in the premises: *Provided,* That should the district attorney neglect or refuse to file the plea, answer, demurrer, or defense, as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court. (28 U. S. C., Sec. 763.)

Veterans' Bureau Regulation No. 3107, so far as herein relevant, reads as follows:

> If a decision is rendered by the insurance claims council adverse to the allegation made by the claimant, a letter so advising the claimant will be concurrently prepared and sent to the claimant at his last address of record. Said letter will advise the claimant the date on which the council denied the claim, and that the claimant may consider such denial final for purposes of instituting suit under section 19 of the World War veterans' act, 1924, as amended. Said letter should further advise the claimant that if he accepts the denial of the claim by the council as final, *the suspension of the statute of limi-*

tations provided by section 19 shall cease from and after the date of this letter plus the number of days usually required by the post-office department for the transmission of regular mail from Washington, D. C., to the claimant's last address of record, and that his case folder has been forwarded to the appropriate office or station (giving name and address of office or station) and that any future inquiries should be directed to that office or station. * * * (November 1, 1931.) (Italics ours.)

Joint Resolution (S. J. Res. 65, 74th Cong., 1st Sess.), adopted August 20, 1935, is as follows:

[S. J. Res. 65, 74th Congress, 1st Session]

In the House of Representatives. March 15, 1935. Referred to the Committee on World War Veterans' Legislation.

JOINT RESOLUTION To extend the period of suspension of the limitation governing the filing of suit under section 19, World War Veterans' Act, 1924, as amended.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in addition to the suspension of the limitation for the period elapsing between the filing in the Veterans' Administration of the claim under a contract of insurance and the denial thereof by the Administrator of Veterans' Affairs or someone acting in his name, the claimant shall have ninety days from the date of such denial within which to file suit as herein provided. This resolution is made effective as of July 3, 1930, and shall apply to all suits now pending against the United States under the provisions of section 19, World War Veterans' Act, 1924, as amended, and

any suit which has been dismissed solely on the ground that the period for filing suit has elapsed but wherein the extension of the period for filing suit as prescribed herein would have permitted such suit to have been heard and determined, may be reinstated within ninety days from the date of enactment of this resolution: *Provided,* That on and after the date of enactment of this resolution, notice of denial of the claim under a contract of insurance by the Administrator of Veterans' Affairs or someone acting in his name shall be by registered mail directed to the claimant's last address of record.

The President's veto memorandum, dated September 5, 1935, is as follows:

I have disapproved "S. J. Res. 65, Joint Resolution to extend the period of suspension of the limitation governing the filing of suit under Section 19, World War Veterans' Act, 1924, as amended" for these reasons:

Apparently the main purpose of this Resolution is to afford further opportunity for persons to sue on their War Risk Insurance where such action was not taken because of the passage of Public No. 2, or, because of failure to file claim at an earlier date, very little time remained for filing suit after final denial by the Administrator of Veterans' Affairs. Any meritorious claim can be filed and allowed by the Veterans' Administration without recourse to the courts.

The Government's policy in permitting suits upon War Risk Insurance has been one of great liberality. It appears to me, in the absence of clear and satisfactory evidence explaining or justifying the long delay before bringing suit, that the very delay would be an indication of the weakness of the

claim. These situations only arise because of the failure of the claimant to file his claim more promptly and is in no sense the fault of the Government.

The Government's liability over and above all premiums received on War Risk Insurance now exceeds a billion and three-quarters. This legislation potentially would add greatly to the final cost. I do not feel that a valid reason exists for this additional expenditure.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
September 5, 1935.

U. S. GOVERNMENT PRINTING OFFICE: 1935